

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

UNITED STATES OF AMERICA	§	
	§	
VS.	§	Case No. 2:03CR7(2)
	§	
PEDRO HERNANDEZ	§	

**FINDINGS OF FACT AND RECOMMENDATION ON GUILTY PLEA
BEFORE THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636(b), this matter has been referred by the District Court for administration of a plea of guilty and allocution under Rule 11 of the Federal Rules of Criminal Procedure.

On November 12, 2009, this cause came before the undersigned United States Magistrate Judge for a plea of guilty and allocution of the defendant on two counts of an indictment. In Count 19 of the indictment, the defendant is charged with a violation of 21 U.S.C. § 841(a)(1) for his possession with intent to distribute and distribution of less than 50 grams of a mixture or substance containing a detectable amount of methamphetamine. In Count 20 of the indictment, the defendant is charged with a violation of 18 U.S.C. § 924(c) for his use and carrying of a firearm during a drug trafficking crime. After conducting said proceeding in the form and manner prescribed by Fed. R. Crim. P. 11, the Court finds:

- a. That the defendant, after consultation with counsel of record, has knowingly and voluntarily consented to the administration of the Guilty Plea and Allocution in this cause by a United States Magistrate Judge, subject to a final approval and imposition of sentence by the District Court.
- b. That the defendant and the government have entered into a plea agreement which has been filed and disclosed in open court pursuant to Fed. R. Crim. P. 11(c)(2).
- c. That the defendant is fully competent and capable of entering an informed plea, that

the defendant is aware of the nature of the charges and the consequences of the plea, and that the plea of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense.

d. That the defendant understands his constitutional and statutory rights and wishes to waive these rights, including the right to a trial by jury and the right to appear before a United States District Judge.

IT IS THEREFORE RECOMMENDED that the District Court accept the Plea Agreement and the Guilty Plea of the defendant and that Pedro Hernandez should be finally adjudged guilty of that offense.

A party's failure to file written objections to the findings, conclusions, and recommendations contained in this Report within ten days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

SIGNED this 19th day of November, 2009.


CHARLES EVERINGHAM IV
UNITED STATES MAGISTRATE JUDGE